

NOT INTENDED FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. 04-90855
	:	
WILLIAM A. KILGORE, JR.,	:	CHAPTER 13
	:	
Debtor.	:	JUDGE MASSEY
	:	

ORDER DENYING MOTION TO ADD JOINT DEBTOR

William A. Kilgore, Jr., the Debtor in this Chapter 13 case, filed his petition on February 2, 2004, naming only himself as the Debtor. Hence, he filed the petition under section 301 of the Bankruptcy Code. He now moves for an order authorizing the addition of his wife as a joint debtor on the ground that she is a necessary party to afford the Kilgores proper relief.

Debtor cites no law empowering the Court to grant such relief, and the Court knows of no such law. In *In re Clinton*, 166 B.R.195 (Bankr. N.D. Ga. 1994), a case with similar facts, this Court held that a case commenced under section 301 could not be transformed into a joint case, either by the amendment of the original petition or by the filing of a second petition in the same case.

In a nutshell, section 302(a), governing joint cases, provides in relevant part that a "joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a *single* petition under such chapter by an individual that may be a debtor under such chapter and such individual's spouse." (Emphasis added.) Mr. Kilgore did not file a petition under section 302, and there is no provision in the Bankruptcy Code permitting a debtor to add a co-debtor after the debtor's petition is filed.

The filing of a petition constitutes the order for relief under both sections 301 and 302. Mr. Kilgore's order for relief was therefore deemed entered as of February 2, 2004. Adding his spouse as a debtor by amendment cannot convert the petition into a joint petition because doing so would create a new order for relief for Mr. Kilgore. He cannot amend his petition to change the filing date, which is what ignoring the order for relief deemed entered on February 2 would do. If Mrs. Kilgore's order for relief were deemed to be February 2, 2004, she would not have been a debtor for over six weeks and then would suddenly have been a debtor all along. That would make no sense. The prejudice to creditors is obvious.

Mrs. Kilgore could file her own case and could then move to have her case jointly administered with Mr. Kilgore's case. That would be the equivalent of having a joint case, because in a joint case, there are two distinct bankruptcy estates being administered under one case number.

The Clerk mistakenly added Mrs. Kilgore to this case as a joint debtor, and Debtor's counsel filed schedules for Mrs. Kilgore prior to the Court's ruling on the motion to add her as a debtor. Mrs. Kilgore is not and never has been a debtor in this case.

For these reasons and others set forth in *In re Clinton, supra*, it is

ORDERED that Debtor's motion to add his spouse as a joint debtor is DENIED and the Statement of Financial Affairs, Schedules A-J, Attorney Disclosure Statement and Summary (document no 12) filed on behalf of Mrs. Kilgore are STRICKEN. The Clerk is directed to delete Mrs. Kilgore's name as a joint debtor in this case.

This 18th day of March 2004.

JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE